

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

BOARD OF TRUSTEES OF THE CEMENT
MASONS HEALTH AND WELFARE
TRUST FUND FOR NORTHERN
CALIFORNIA et al.,

Plaintiffs,

v.

C & C CONCRETE, INC., et al.,

Defendants.

No. C 10-03344 LB

**ORDER STRIKING DEFENDANT C &
C CONCRETE, INC.'S ANSWER**

[Re: ECF Nos. 42, 65, 66, 72]

On July 29, 2010, Plaintiffs – the trustees of employee benefits plans for masons and other covered employees in the construction industry – filed a complaint against Defendants C & C Concrete, Inc. (“C & C Concrete”) and Jose R. Herrera, Jr. (collectively, “Defendants”), for failing to pay employee fringe benefits and make monthly reports in violation of the parties’ collective bargaining agreement, the trust agreements, and the Employee Retirement Income Security Act (“ERISA”). *See* Complaint, ECF No. 1 at 1-2, ¶ 1.¹ Defendants jointly filed an answer to Plaintiffs’ complaint. *See* Answer, ECF No. 42.

Defendants were represented by attorney Scott Woodall. The court subsequently granted Mr.

¹ Citations are to the Electronic Case File (“ECF”) with pin cites to the electronic page number at the top of the document, not the pages at the bottom.

1 Woodall's motion to withdraw. *See* Order Granting Defendants' Counsel's Motion to Withdraw,
2 ECF No. 65 at 1. In the order, the court noted that "corporations may not appear in federal court
3 except through counsel," *see* N.D. Cal. Civil Local Rule 3-9(b), and ordered C & C Concrete to file
4 a substitution of counsel by June 29, 2012. *Id.* at 3. It also ordered Mr. Herrera to file either a
5 notice of his intention to proceed *pro se* or a substitution of counsel by June 29, 2012. *Id.* Neither C
6 & C Concrete nor Mr. Herrera filed anything.

7 On July 31, 2012, and at Plaintiffs' request, the court dismissed Mr. Herrera from the case based
8 on his bankruptcy discharge. *See* Notice of Discharge and Order, ECF No. 69.

9 The court previously ordered C & C Concrete to appear in court on August 2, 2012, at 11:00
10 a.m., to show cause why it failed to file a substitution of counsel. Order to Show Cause, ECF No. 66
11 at 2. It also ordered C & C Concrete to file a written response to the Order to Show Cause by July
12 26, 2012. *Id.* Plaintiffs asked the court to strike Defendant C & C Concrete's Answer to the First
13 Amended Complaint, thus allowing Plaintiffs to proceed in default against C & C Concrete. *See*
14 Plaintiffs' Case Management Conference Statement, ECF No. 67 at 3.

15 C & C Concrete did not file a response or appear in court as ordered on August 2, 2012. *See*
16 8/2/2012 Minute Entry, ECF No. 71. The court then ordered C & C Concrete to show cause why its
17 answer should not be stricken and set a hearing on September 20, 2012. Second Order to Show
18 Cause, ECF No. 72. In response, Mr. Herrera filed a letter stating that he cannot find an attorney to
19 represent C & C Concrete in this matter, and that even if he did, he does not have the money to pay
20 for an attorney for C & C Concrete. *See* Herrera Letter, ECF No. 73.

21 While the court is sympathetic to Mr. Herrera's (and thus his business's) situation, under the
22 court's Civil Local Rules, as the court has already explained, "corporations may not appear in federal
23 court except through counsel." *See* N.D. Cal. Civil Local Rule 3-9(b). Mr. Herrera's letter does not
24 change this, and the court cannot allow him to appear in court on C & C Concrete's behalf. Thus,
25 the court **STRIKES** C & C Concrete's answer and invites Plaintiffs to seek C & C Concrete's
26 default and to proceed with a motion for default judgment, should Plaintiffs choose to do so.

27 Pursuant to the order permitting Mr. Woodall's withdrawal and requiring him to continue to
28 serve on Defendants all papers in this case, service of this order on Mr. Woodall shall constitute

1 service on C & C Concrete, and Mr. Woodall shall make all reasonable efforts to ensure that C & C
2 Concrete receives actual notice of this order as promptly as possible. *See* Order, ECF No. 66 at 3
3 (under circumstances of this case, particularly with regard to C & C Concrete, which cannot appear
4 except through counsel, Mr. Woodall must serve on Defendants all papers until a substitution of
5 counsel is filed).

6 **IT IS SO ORDERED.**

7 Dated: September 20, 2012



LAUREL BEELER
United States Magistrate Judge